No. 93-11

In The

Supreme Court of the United States

October Term, 1992

QUILL CORPORATION,

Petitioner,

v.

STATE OF NORTH DAKOTA, by and through its Tax Commissioner, Robert E. Hanson,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of The State Of North Dakota

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Tax Injunction Act, 28 U.S.C. § 1341, prohibit a state court of competent jurisdiction from entertaining a cause of action under 42 U.S.C. § 1983 in a case involving state taxation?

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STATE OF NORTH DAKOTA, by and through its Tax Commissioner, Robert E. Hanson,

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Petition For Writ Of Certiorari To The Supreme Court Of The State Of North Dakota

PETITION FOR WRIT OF CERTIORARI

Petitioner, Quill Corporation ("Quill"),[1] respectfully prays that a writ of certiorari issue to review the opinion of the North Dakota Supreme Court issued on remand after this Court's decision in *Quill Corporation v. North Dakota*, 504 U.S. ___, 112 S.Ct. 1904 (1992). The North Dakota Supreme Court held that the courts of North Dakota may not entertain Quill's cause of action under 42

[1] Pursuant to Supreme Court Rule 29.1, the Court is advised that Quill is neither the parent nor the subsidiary of any other company.

U.S.C. § 1983 for deprivation of Quill's Commerce Clause rights.

OPINIONS BELOW

The Opinion of the North Dakota Supreme Court was issued on May 11, 1993, is reported at ___ N.W.2d ___, is unofficially available electronically at 1993 N.D. Lexis 90, and is reprinted in the Appendix ("App.") at App. 1.

The Amended Judgement and Opinion of the North Dakota Supreme Court was issued on July 28, 1992, is reported at 487 N.W.2d 598 (N.D. 1992), and is reprinted in the Appendix at App. 20.

The Opinion of this Court in *Quill Corporation v. North Dakota*, was issued on May 26, 1992, is reported at 504 U.S. ___, 112 S.Ct. 1904 (1992), and is reprinted in the Appendix at App. 24.

The Opinion of the North Dakota Supreme Court was issued on May 7, 1991, is reported at 470 N.W.2d 203 (N.D. 1991), and is reprinted in the Appendix at App. 68.

The Opinion of the District Court for the South Central Judicial District, County of Burleigh, State of North Dakota, Judge Benny Graff presiding, was issued on May 15, 1990, is unofficially reported in CCH, *North Dakota State Tax Reporter*, Vol. 2, ¶ 200-376, and is reprinted in the Appendix at App. 111.

JURISDICTION

The Opinion of the North Dakota Supreme Court was issued on May 11, 1993. No rehearing was requested. The jurisdiction of this Court to review the decision of the North Dakota Supreme Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following constitutional and statutory provisions:

United States Constitution, Article VI, § 2:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary.

28 U.S.C. § 1341:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

42 U.S.C. § 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of

any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988 (last sentence):

In any action or proceeding to enforce a provision of sections 1977, 1978, 1979, 1980, and 1981 of the Revised Statutes [42 USCS §§ 1981-1983, 1985, 1986], title IX of Public Law 92-318 [20 USCS §§ 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

N.D. Century Code § 32-23-01:

A court of record within its jurisdiction shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

STATEMENT OF THE CASE

In *Quill Corporation v. North Dakota*, 504 U.S. ___, 112 S.Ct. 1904 (1992), the Court held that North Dakota's imposition of use tax collection responsibility on Quill was prohibited by the Commerce Clause of the United States Constitution. On remand, the North Dakota Supreme Court addressed Quill's claim that this violation of its rights secured by the Commerce Clause gave it a cause of action under 42 U.S.C. § 1983. The North Dakota Supreme Court concluded that the courts of North Dakota may not entertain Quill's § 1983 cause of action. It is this refusal to entertain Quill's § 1983 cause of action which Quill requests this Court to review.[2]

Proceedings Below

Effective July 1, 1987, North Dakota adopted legislation making mail order companies such as Quill liable to collect and remit North Dakota use tax. On July 7, 1989, the State of North Dakota, through its Tax Commissioner, filed an original action in District Court under North Dakota's Declaratory Judgment Act, N.D.C.C. § 32-23-01, requesting the court to declare that Quill was obligated to collect and remit use tax and to hold Quill liable for use tax, plus interest and penalties, retroactive from July 1, 1987. App. 116.

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[2] The substantive tax issues of this case are fully described in the Court's prior opinion. The discussion which follows is limited to those parts of the proceedings below which are relevant to the question of the North Dakota courts' obligation to hear and decide Quill's claim under 42 U.S.C. § 1983.

Quill answered, claiming that it was not obligated to collect and remit use tax based on this Court's decision in *National Bellas Hess, Inc. v. Dept. of Revenue*, 386 U.S. 753 (1967). Quill also filed a counterclaim against the State and the Tax Commissioner, in her official capacity,[3] under 42 U.S.C. § 1983. App. 123. Quill alleged that the imposition of use tax collection responsibility violated Quill's rights secured by the Due Process Clause and Commerce Clause of the United States Constitution. Quill prayed for a declaration that North Dakota and the Tax Commissioner had deprived Quill of its constitutional rights within the meaning of 42 U.S.C. § 1983. App. 132. Quill also requested an award of attorneys fees under 42 U.S.C. § 1988. The Tax Commissioner answered Quill's counterclaim by asserting that the § 1983 claim against her in her official capacity was barred by the Eleventh Amendment and the doctrine of Sovereign Immunity. App. 139.

In a memorandum decision, the District Court found that North Dakota could not require Quill to collect and remit use tax, finding this Court's decision in *National Bellas Hess* to be controlling. The District Court, without explanation, denied Quill's counterclaim based upon § 1983.

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[3] Quill agrees that the State of North Dakota is immune from suit under § 1983. However, a state officer is liable if sued in his or her official capacity for injunctive or declaratory relief. *Will v. Michigan Department of State Police*, 491 U.S. 58, at 71, n.10 (1989).

The Tax Commissioner of North Dakota at the time of suit was Heidi Heitkamp. She has been succeeded by Robert E. Hanson and the North Dakota Supreme Court substituted Mr. Hanson as a party in this case.

The North Dakota Supreme Court reversed the District Court and held that Quill was obligated to collect and remit use tax under the 1987 legislation and remanded the case for entry of judgment in favor of the State on all claims. Because of its disposition, the court did not reach Quill's § 1983 claim.

The Court granted Quill's Petition for Writ of Certiorari and reversed the decision of the North Dakota Supreme Court. The Court held that the Commerce Clause prohibits North Dakota from imposing use tax collection and payment obligations on Quill because it lacks a physical presence in North Dakota. The Court remanded the case to the North Dakota Supreme Court for further proceedings.

On remand, the North Dakota Supreme Court initially entered an Amended Judgement and Opinion holding that Quill was not obligated to collect and remit North Dakota use tax but, without explanation, denied Quill's claim based upon § 1983. App. 23.

Quill filed a petition for rehearing from that part of the Amended Judgement and Opinion which denied Quill's § 1983 claim. The petition was granted, and the North Dakota Supreme Court subsequently issued the opinion which is the subject of this Petition for Writ of Certiorari.

The North Dakota Supreme Court's Opinion

The North Dakota Supreme Court characterized the positions of the parties on the § 1983 issue as follows:

> The State argued that this case is controlled by *Linderkamp v. Bismarck School District No. 1*, 397 N.W.2d 76 (N.D. 1986), in which we held that taxpayers could not bring a § 1983 action in state court to enjoin the assessment of state taxes if there was an adequate remedy available under state law. Quill argues that the rationale underlying *Linderkamp* has been rejected by the United State Supreme Court in *Howlett v. Rose*, 496 U.S. 356 (1990).

App. 3. The court then reviewed this Court's opinion in *Howlett*. The court first described the *Howlett* decision as follows:

> The Court is merely saying that federal law is binding on the states, and that state courts do not have discretion to refuse to hear federal causes of action.

App. 9. The court went on to say that *Howlett* stood for the proposition that:

> [T]he Supremacy Clause precludes state courts from applying state procedural rules that would necessarily produce a different result than if the case had been brought in federal court.

App. 9. Based upon this reading, the court refused to find that *Howlett* required the North Dakota courts to entertain Quill's cause of action under § 1983.

The court, citing *Howlett*, *Felder v. Casey*, 487 U.S. 131 (1988), and *Wilson v. Garcia*, 471 U.S. 261 (1985), stated that this Court has expressed a strong preference for uniformity of result in § 1983 cases, whether brought in federal or state courts. The court concluded that uniformity was preserved by refusing to hear Quill's § 1983

cause of action in state court when the same action could not be brought in federal court. App. 10.

The court observed that its refusal to entertain Quill's § 1983 cause of action found support in a number of other state court decisions. The court cited *L.L. Bean, Inc. v. Bracey*, 817 S.W.2d 292 (Tenn. 1991), and *Greenwich Township v. Murtagh*, 601 A.2d 1352 (Pa. Commw.), *appeal granted*, 606 A.2d 904 (Pa. 1992). App. 11-12.

Finally, the court stated that its decision was based on federal law and policy. The court stated that the enactment of the Tax Injunction Act reflected a congressional policy of federal non-interference in state tax administration. Following *Hogan v. Musolf*, 471 N.W.2d 216 (Wis. 1991), *cert. denied*, 112 S.Ct. 867 (1992), the court held that the federal policy of non-interference supported its refusal to permit Quill to bring a § 1983 cause of action in state court. App. 15.

REASONS FOR GRANTING THE PETITION

The North Dakota Supreme Court's refusal to hear Quill's § 1983 claim raises a substantial federal question. *Howlett*, 496 U.S., at 366. The obligation of state courts to entertain § 1983 claims is at issue in an increasing number of state tax cases. Eight state courts of last resort have issued directly conflicting decisions on this question.

This division among the state courts is most recently demonstrated by the decision of the North Dakota Supreme Court in this case and the decision of the Tennessee Supreme Court in *Bloomingdale's by Mail Ltd. v.*

Huddleston, 848 S.W.2d 52 (Tenn. 1992), *cert. denied*, ___ S.Ct. ___, June 21, 1993. The Tennessee Supreme Court held that *Howlett* requires the Tennessee courts to entertain taxpayers' § 1983 claims, the argument rejected by the North Dakota Supreme Court below. This Court denied the Tennessee Commissioner of Revenue's Petition for Writ of Certiorari on June 21, 1993.

Six other state courts of last resort have addressed the question of whether their courts must hear § 1983 claims in state tax cases. Four courts have accepted the arguments adopted by the North Dakota Supreme Court below and held that the state courts may not hear § 1983 claims in state tax cases. *Spencer v. South Carolina Tax Comm'n*, 316 S.E.2d 386 (S.C. 1984), aff'd by an equally divided Court, 471 U.S. 82 (1985) (*per curiam*); *Backus v. Chilivis*, 224 S.E.2d 370 (Ga. 1976); *Zizka v. Water Pollution Control Authority*, 490 A.2d 509 (Conn. 1985); and *Stufflebaum v. Panethiere*, 691 S.W.2d 271 (Mo. 1985).

In contrast, the Mississippi Supreme Court, in *Marx v. Truck Renting and Leasing Ass'n, Inc.*, 520 So. 2d 1333 (Miss. 1987), and the Kansas Supreme Court, in *Allison v. Board of County Commissioners of Johnson County, Kansas*, 737 P.2d 6 (Kan. 1987) held that their state courts were required to hear taxpayers' § 1983 claims. These decisions hold that the Tax Injunction Act does not permit the state courts to refuse to entertain such claims.[4]

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[4] This question has also been the subject of a number of law review articles, which have concluded that the state courts are obligated to entertain § 1983 claims in state tax cases. Note, *Clarifying Comity: State Court Jurisdiction and Section 1983 State Tax Challenges*, 103 Harv. L. Rev. 1888 (1990); Note, *Does the Tax*

This Court has not explicitly answered the question raised in *Quill* and the other cases cited above. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, at 234 (1987). More recently, Justice Kennedy stated in his dissent in *Dennis v. Higgins*, 498 U.S. 439 (1991), that as a consequence of the Court's holding that Commerce Clause violations are cognizable under § 1983, the question of the obligation of state courts to hear § 1983 claims in state tax cases is of "paramount importance". 498 U.S., at 465. The question raised in this case is ripe for review. This Court should grant Quill's Petition and hold that state courts of competent jurisdiction are obligated to entertain causes of action under § 1983 in cases involving state taxation.

The decision of the North Dakota Supreme Court is contrary to the fundamental principles of state court jurisdiction to hear federal causes of action. In *Howlett*, this Court explained the obligation of state courts to enforce federal law:

> Federal law is enforceable in state courts not because Congress has determined that federal courts would otherwise be burdened or that state courts might provide a more convenient forum – although both might well be true – but because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature. The Supremacy

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Injunction Act of 1937 Affect State Court Jurisdiction Over State Tax Challenges Under Section 1983 of the Civil Rights Act of 1871?, 45 Wash. & Lee L. Rev. 381 (1988); and Taylor, *Section 1983 in State Court: A Remedy for Unconstitutional State Taxation*, 95 Yale L.J. 414 (1985).

> Clause makes those laws "the supreme Law of the Land," and charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure.

496 U.S., at 367. The only limitations on this obligation which the Court recognized in *Howlett* are cases over which Congress has explicitly ousted the state courts from jurisdiction and certain "valid excuses" based on neutral principles of state court procedure, i.e. principles which apply to both state and federal claims. Neither limitation applies in this case.

The Tax Injunction Act Does Not Oust the State Courts From Jurisdiction Over § 1983 Claims in State Tax Cases

The Court has frequently observed that Congress intended concurrent federal and state court jurisdiction over claims based on § 1983. *Martinez v. California*, 444 U.S. 277, at 283 (1980); *Patsy v. Florida Board of Regents*, 457 U.S. 496, at 506-507 (1982); and *Felder v. Casey*, 487 U.S. 131, at 147 (1988). *Howlett*, of course, went on to hold that state court jurisdiction is mandatory absent congressional ouster or a "valid excuse". The adoption of the Tax Injunction Act did not oust the state courts from jurisdiction over § 1983 claims in state tax cases.

The standards for determining whether Congress has ousted states from jurisdiction over federal causes of action were recently restated in *Tafflin v. Levitt*, 493 U.S. 455 (1990). The Court, quoting *Gulf Offshore Co. v. Mobil Oil Corp.* 453 U.S. 473 (1981), stated:

> In considering the propriety of state-court jurisdiction over any particular federal claim, the Court begins with the presumption that state

> courts enjoy concurrent jurisdiction. Congress, however, may confine jurisdiction to the federal courts either explicitly or implicitly. Thus, the presumption of concurrent jurisdiction can be rebutted by an explicit statutory directive, by unmistakable implication from legislative history, or by a clear incompatibility between state-court jurisdiction and federal interests. 453 U.S., at 478 (citations omitted).

493 U.S., at 459-460. It is clear, and the North Dakota Supreme Court admits, that the explicit language of the Tax Injunction Act does not divest the state courts from jurisdiction over § 1983 claims in state tax cases. App. 4. The language of the Tax Injunction Act is directed solely at the jurisdiction of the federal courts.

Similarly, there is nothing in the legislative history of the Tax Injunction Act which by "unmistakable implication" ousts the state courts from jurisdiction over § 1983 claims in state tax cases. That history and this Court's decisions reviewing that history, e.g. *Fair Assessment in Real Estate Ass'n., Inc. v. McNary*, 454 U.S. 100 (1981), provide no indication that Congress even considered the possible application of the Tax Injunction Act to restrict state court jurisdiction. The sole focus was on federal court jurisdiction. Thus, if the enactment of the Tax Injunction Act can be said to oust the state courts from jurisdiction over § 1983 cases such as Quill's, this ouster can only be based on a "clear incompatibility between state-court jurisdiction and federal interests." There is no such incompatibility.

The federal interest expressed in the Tax Injunction Act was to limit federal *court* interference with state tax

administration. In *Rosewell v. LaSalle National Bank*, 450 U.S. 503 (1981), the Court explained:

> The statute "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." *Tully v. Griffin, Inc.*, 429 U.S. [68,] at 73 [(1976)]. This last consideration was the principal motivating force behind the Act: this legislation was first and foremost a vehicle to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes. 81 Cong. Rec. 1415 (1937) (remarks of Sen. Bone). . . .

450 U.S., at 522. The North Dakota Supreme Court argues that requiring state courts to hear § 1983 claims in state tax cases will be as disruptive of state tax administration as permitting similar suits in federal court. App. 15. This argument fundamentally mischaracterizes the impact of § 1983 claims on state tax administration.

Section 1983 does nothing more than give a taxpayer a cause of action for violation of its rights secured by the Constitution or the laws of the United States. *Fair Assessment in Real Estate*, 454 U.S., at 103. It does not affect state tax procedures either at the administrative or judicial level. The taxpayer must still exhaust administrative procedural remedies before bringing its § 1983 claim in state court. *Fair Assessment in Real Estate*, 454 U.S., at 133 (Brennan, J., concurring).[5]

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[5] State courts have generally required exhaustion of administrative remedies before the taxpayer may bring a § 1983 claim. See, e.g., *Nutbrown v. Munn*, 811 P.2d 131 (Or. 1991), *cert. denied*, 112 S.Ct. 867 (1992).

The claimant under § 1983 is also subject to the normal procedural rules of the state courts. As the Court said in *Howlett*:

> The general rule "bottomed deeply in belief in the importance of state control of state judicial procedure, is that federal law takes the state courts as it finds them." Hart, 54 Colum. L. Rev., at 508; see also *Southland Corp. v. Keating*, 465 U.S. 1, 33 (1984) (O'Connor, J.. dissenting); *FERC v. Mississippi*, 456 U.S., at 774 (opinion of Powell, J.).

496 U.S., at 372. What this Court said in *Howlett* when discussing the Federal Employers' Liability Act, is equally applicable to § 1983:

> Congress had not attempted "to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure."

496 U.S., at 373. A § 1983 claim does not enlarge, regulate or interfere with state tax administration and court procedures.

Section 1983 also does not provide any new or different remedies than would be available for claims based on state law. Quill is entitled to request declaratory relief because North Dakota law authorizes actions for declaratory relief in state tax cases. N.D.C.C. § 32-23-01. Absent such a state procedure Quill would be limited to other remedial procedures authorized by state law.

Except for the potential award of attorneys fees, requiring the state courts to hear claims under § 1983 will have no more impact on state tax administration than requiring the courts to hear claims based on other federal

statutes imposing substantive restrictions on state taxing powers. Congress has enacted at least forty six (46) separate laws limiting the states' taxing powers.[6] Each can be said to interfere with a state's power of taxation. Each restriction is also routinely enforced in state court without objection by the states.

In the end, the North Dakota Supreme Court's major concern is not that the state courts must entertain § 1983 causes of action but that they must award attorneys fees to the prevailing taxpayer under 42 U.S.C. § 1988. This is the primary federal "interference" to which the court objects. That objection is misplaced. Fees will be awarded only when the taxpayer sustains a claim that its federal constitutional or statutory rights have been violated. This will not threaten the states' fiscal autonomy or tax administration.

At least 33 states have authorized the award of attorneys fees in state tax cases.[7] The Tennessee attorneys fee statute described in *Bloomingdale's* is illustrative. If the award of fees under state law does not interfere with or threaten the states' tax collection systems, surely the potential for an award of attorneys fees as the result of violating a taxpayer's federal rights is no threat.

In sum, Congress has not ousted the state courts from their concurrent jurisdiction under § 1983. The existence of the Tax Injunction Act and the principles which it expresses are in no way violated or threatened by requiring the North Dakota courts to hear Quill's § 1983 claim.

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[6] These statutes are listed and described at App. 140.

[7] These attorneys fee statutes are listed at App. 146.

A Preference for Uniformity Does Not Justify the North Dakota Supreme Court's Refusal to Entertain Quill's § 1983 Claim

The North Dakota Supreme Court makes a major point of the fact that its refusal to hear Quill's § 1983 claim is consistent with and advances a Congressional desire for uniform results in § 1983 cases. App. 10. According to the North Dakota Supreme Court, the goal of uniformity requires that a cause of action which may not be brought in federal court may not be brought in state court. This is a *reductio ad absurdum.*

In *Felder v. Casey,* the Court struck down a state "notice of claim" statute because it truncated the plaintiff's federal rights under § 1983. The Court found this restriction inconsistent with the Congressional intention to provide the broadest possible relief to those deprived of their federal rights by state action. The Court held that the state could not adopt procedural rules which restricted the plaintiff's federal rights beyond those rules applicable in federal court.

The North Dakota Supreme Court turns this "uniformity" principle on its head and uses it to deny Quill any forum within which to bring its § 1983 claim. What was a broad remedial and compensatory rule thus becomes a barrier to the vindication of federal rights. This is not what the Court or Congress intended.

In *Dennis v. Higgins,* 498 U.S. 439 (1991), the Court held that a taxpayer has a cause of action under § 1983 when its rights under the Commerce Clause are violated. These rights and that decision are a dead letter if the state courts can refuse to entertain § 1983 claims such as Quill's.

The North Dakota Supreme Court Has Offered No "Valid Excuse" for Refusing to Hear Quill's § 1983 Claim

The North Dakota Supreme Court cannot, and does not, claim that it has a "valid excuse" which justifies its refusal to hear Quill's § 1983 claim. Clearly, the District Court has jurisdiction over Quill's declaratory judgment action. Such jurisdiction is routinely exercised to hear claims based on state law. See, e.g. *Linderkamp v. Bismarck School District, No. 1*, 397 N.W.2d 76 (N.D. 1986). Thus, far from offering a "valid excuse", the opinion of the North Dakota Supreme Court exhibits a hostility toward Quill's federal claim which is not exhibited toward state claims. This type of discrimination was rejected in *Howlett*:

> An excuse that is inconsistent with or violates federal law is not a valid excuse: The Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source. "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of [the State] as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State." *Mondou*, 223 U.S., at 57; see *Miles v. Illinois Central R. Co.*, 315 U.S. 698, 703-704 (1942) ("By virtue of the Constitution, the courts of the several states must remain

> open to such litigants on the same basis that they are open to litigants with causes of action springing from a different source"); *McKnett v. St. Louis & San Francisco R. Co.*, 292 U.S. 230, 233-234 (1934); *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916); cf. *FERC v. Mississippi*, 456 U.S. 742, 776, n.1 (1982) (opinion of O'Connor, J.) (State may not discriminate against federal causes of action).

496 U.S., at 371-372. The Court should reject North Dakota's discrimination against Quill's federal claim just as it rejected Florida's discrimination against the federal claim in *Howlett*.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari and reverse the decision of the North Dakota Supreme Court.

Respectfully submitted,

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